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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/728,419

12/08/2003

Scott K. Parrish

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9778

25871 7590 05/26/2010
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EXAMINER

PAK, JOHN D

ART UNIT

PAPER NUMBER

1616

NOTIFICATION DATE

DELIVERY MODE

05/26/2010

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

efspatents@sbiplaw.com

Office Action Summary	Application No. 10/728,419	Applicant(s) PARRISH, SCOTT K.	
	Examiner John Pak	Art Unit 1616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 February 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,4-8 and 10-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,4-8 and 10-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>2/16/10</u> . | 6) <input type="checkbox"/> Other: _____ |

Claims 1-2, 4-8 and 10-20 are pending in this application.

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 10 and 11 stand rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Claims 10 and 11 recite "a pH of between 1 and 5." pH 5 was not originally disclosed. This lacks adequate descriptive support.

In the reply filed on 2/10/2010, applicant advances the same argument that was disputed before in the Office action of 8/10/2009. Applicant states again that support for a pH between 1 and 5 can be found, for example on page 2, lines 12-13. The following is an exact reproduction of page 2, lines 12-13 –

Detailed Description of the Invention The phosphonic acids, phosphonic acid derivatives, and their salts (hereinafter collectively referred to as "phosphonic compounds"). Phosphonic compounds such as ethephon ($\text{ClCH}_2\text{CH}_2\text{PO}_3\text{H}_2$ or any phosphonic acid derivatives that will break down into ethylene in or on an plant when applied to the foliage of a target plant. These effects are increased and the speed of development is faster when the phosphonic compound is

12 formulated in any acid that will buffer the application solution (water carrier) to a

13 pH between 4 and 1. The spray solution should be applied in agricultural or horticultural application to the foliage of the target plant.

As can be clearly seen, the original disclosure was for pH between 1 and 4, not between 1 and 5. The original disclosure at lines 12-13 does not cover pH 4.01, for example, whereas current claims 10-11 read on pH 4.01.

For these reasons, this ground of rejection must be maintained.

Applicant's claim amendments and remarks filed on 5/21/2009¹ are again noted for the record for the purpose of claim interpretation.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and

¹ "Claims 1, 2, 12, and 14 are amended to indicate the composition is a concentrate." See page 5 of the remarks filed on 5/21/2009.

the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-2, 4-8, 10-11 and 16-20 stand rejected under 35 U.S.C. 103(a) as being unpatentable over CN 1252940 in view of The Agrochemicals Handbook, Farm Chemicals Handbook '98, Fritz et al. (US 3,879,188) and CABA abstract 80:49077, further in view of Ethephon publication (9/1998) and Imidacloprid publication (3/1995) for the reasons of record. See the Office action of 11/24/2008, pages 7-15, wherein the full discussion there is incorporated herein by reference; see also the previous Office action of 8/10/2009.

Applicant's arguments of 2/10/2010 have been given due consideration, but they were deemed unpersuasive for the following reasons.

Applicant points to the disclosure of Volgas et al. (US 2007/0037707) and others to argue that there was a long-felt and unmet need, copying and unexpected result in co-formulating ethephon with applicant's acids. Again, applicant does not address the specific teachings of the cited prior art in this ground of rejection. The cited prior art by CN 1252940 teaches ethephon co-formulated with an acid, hydrochloric acid in particular. This prior art was published in 1999, so it plainly rebuts applicant's aforementioned arguments.

Applicant also argues the absence of prior use as evidence of non-obviousness. This argument is clearly erroneous because absence of prior use is evidence of novelty, not non-obviousness.

For these reasons, this ground of rejection must be maintained.

Claims 1-2, 4-8, 10-20 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Fritz et al. (US 3,879,188) in view of CABA abstract 80:49077, The Agrochemicals Handbook, The Farm Chemicals Handbook '98, CN 1252940 and the ethephon publication for the reasons of record. See the Office action of 11/24/2008, pages 16-22, wherein the full discussion there is incorporated herein by reference; see also the previous Office action of 8/10/2009.

Applicant's arguments of 2/10/2010 have been given due consideration, but they were deemed unpersuasive for the following reasons.

Applicant points to the disclosure of Volgas et al. (US 2007/0037707) and others to argue that there was a long-felt and unmet need, copying and unexpected result in co-formulating ethephon with applicant's acids. Again, applicant does not address the specific teachings of the cited prior art in this ground of rejection. The cited prior art by CN 1252940 teaches ethephon co-formulated with an acid, hydrochloric acid in particular. This prior art was published in 1999, so it plainly rebuts applicant's aforementioned arguments.

Applicant also argues the absence of prior use as evidence of non-obviousness. This argument is clearly erroneous because absence of prior use is evidence of novelty, not non-obviousness.

For these reasons, this ground of rejection must be maintained.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to John Pak whose telephone number is **(571)272-0620**. The Examiner can normally be reached on Monday to Friday from 8 AM to 4:30 PM.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's SPE, Johann Richter, can be reached on **(571)272-0646**.

The fax phone number for the organization where this application or proceeding is assigned is **(571)273-8300**.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571)272-1600.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free)

/John Pak/
Primary Examiner, Art Unit 1616